89

Supreme Court, U.S.
FILED
071267 APR 2 - 2008
OFFICE OF THE CLERK

No. (2)

In The

Supreme Court of the United States

ROBERT L. MCLEAR

Petitioner, pro se,

v.

WEST VIRGINA STATE TAX COMMISSIONER,

Respondent

On Petition For Writ of Certiorari

To The

CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

APPENDIX I, TO PETITION FOR A WRIT OF CERTIORARI

Robert L. McLear
11 Woodland Avenue,
Parkersburg, WV 26101
(304) 863-6083

TABLE OF CONTENTS

Circuit Court of Kanawha County, West Virginia,
Final Order Dismissing
Complaint for Declaratory Relief ..... Pages 2 -17

State of West Virginia, Supreme Court of Appeals
Refusal of Petition for Appeal ..... Page 18

Circuit Court of Wood County, West Virginia,
Final Order Disposing of Appeal..... Page 19

United States v. Atlas Life Insurance Co.,
381 U.S. 233 No. 489, Exhibit F ..... Page 22

CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ROBERT L. MCLEAR,

Plaintiff

Civil Action No.: 07-C-669

The Honorable Judge Paul Zakaib, Jr.

v.

WEST VIRGINIA STATE TAX COMMISSION [sic],

Defendant.

FILED
2007 SEP 14 PM 2:39
S/ CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

FINAL ORDER DISMISSING COMPLAINT FOR DECLARATORY RELIEF

This matter is before the Circuit Court based upon the "Complaint" filed by the Robert L. McLear on April 6, 2007 pursuant to the Declaratory judgment Act. Along with the Complaint, Mr. McLear filed "Plaintiff's Motion For Prompt Declaratory Judgment".

Subsequently, on April 25, 2007 the Tax Department filed the "Tax Department's Answer to Complaint" and "Tax Department's Motion to Dismiss Pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure". On July 6, 2007 the Tax Department filed a "Supplemental Memorandum of Law In Support of Tax Department's Motion to Dismiss Pursuant to Rule 12(b)(6)" which included a true copy of a decision by the Circuit Court of Wood County in the case styled Robert L. McLear v. West Virginia State Tax Commissioner, Civil Action No. 04-P-198. On July 23, 2007 the Circuit Court held oral arguments from the parties.

Having considered the pleadings filed herein, the legal arguments presented by both parties and the applicable law, the Circuit Court finds and concludes as follows.

FINDINGS OF FACT

1. Petitioner, Robert L. McLear, is a retired citizen of West Virginia residing in Wood County

2. Petitioner, Robert L. McLear, has filed a declaratory judgment action seeking to determine his rights under West Virginia personal income tax laws. The Plaintiff requests that the Court determine his rights under the West Virginia Senior Citizen Deduction.

3. Plaintiff has specifically requested that the Court issue a declaratory judgment proclaiming West Virginia Code §§ 11-21-

12(c)(8)(i) and (ii) null and void; issue a declaratory judgment proclaiming West Virginia Code §§ 11-21-12(c)(9)(i) and (ii) null and void; and award Plaintiff out-of-pocket expenses and compensation for his time and effort in litigating this suit. See Complaint at pp. 6 & 7, paragraphs A, B, C, & D.

4. Petitioner, Robert L. McLear, represents that he has earned interest on United States savings bonds in previous years and reported the interest on his West Virginia personal income tax returns as required.

5. Petitioner, Robert L. McLear, represents that he and his wife will earn similar interest on United States savings bonds in future years.

6. Petitioner, Robert L. McLear, argues that the net effect of the application of "Senior Citizen Deduction" pursuant to WV Code § 11-21-12(c) results in imposing West Virginia personal income tax on interest earned from federal debt obligations in violation of 31 U.S.C § 3124(a).

7. At the time he filed the instant declaratory judgment action, Mr. McLear and his wife had a second case pending in the Circuit Court of Wood County, Robert L. McLear v. W. V. State Tax Commissioner, Civil Action No. 04-P-198. Plaintiff has admitted in the declaratory judgment Complaint that both cases address the same legal issue (concerning the application of the West Virginia Citizen Deduction. See Complaint at ¶ 16.

7. [sic] The Wood County case raised the same abstract legal question in the context of an appeal of a decision of the West Virginia Office of Tax Appeals which affirmed the Tax Department's denial of a refund of personal income taxes for the 2002 calendar year.

8. Pursuant to an Order entered of June 7, 2007, the Honorable J. D. Beane denied the request of Mr. & Mrs. McLear to reverse the decision of the West Virginia Office of Tax Appeals and dismissed the McLear's appeal.

9. At the hearing on July 23, 2007, the Tax Department argued that it must apply the West Virginia personal income tax laws and WV Code § 11-21-12(c) as written.

10. At. The hearing on July 23, 2007, Petitioner, Robert L. McLear, stated on the record that the Tax Department had, in fact, applied the Senior Citizen Deduction as written. Mr McLear further stated that the Legislature did not fully understand the net effect of its actions in enacting WV Code § 11-21-12(c).

DISCUSSION

The Complaint raises a simple legal question. Plaintiff argues that the application of the Senior Citizen Deduction in West Virginia Code § 11-21-12(c)(8) acts as a tax on interest earned from federal debt obligations, such as US Savings Bonds, in violation of 31 U.S.C § 3124(a).

The starting point to calculate West Virginia personal income tax is the individual's federal

adjusted gross income (Federal AGI). See West Virginia Code § 11-21-12(a). The Federal AGI is subject to seven increasing modifications and eleven decreasing modifications in order to calculate West Virginia adjusted gross income. See West Virginia Code § 11-21-12(b) & 12(c). Federal AGI is either increased or decreased as specifically directed in the personal income tax code.

While interest on US Savings Bonds is subject to federal taxation, it is exempt from state taxation. See 31 U.S.C § 3124 and West Virginia Code § 11-21-12(c)(1). The West Virginia personal income tax code expressly lists interest received from federal debt obligations, such as US Savings Bonds, as the very first deduction taken from Federal AGI in order to calculate West Virginia adjusted gross income.

Plaintiff is objecting to the application of the West Virginia Senior Citizen Deduction set forth in West Virginia Code § 11-21-12(c)(8). The State of West Virginia has determined that every West Virginia taxpayer who is 65 years of age or older shall be entitled to a **maximum** deduction of $8,000.00. The Senior Citizen Deduction is clear.

> (c) *Modifications reducing federal adjusted gross income.* -- **There shall be subtracted from federal adjusted gross income to the extent included therein: ...**
>
> (8) **Federal adjusted gross income in the amount of eight thousand dollars** received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, **by**

any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: ***Provided, however*, That:**

(i) **Where the total modification under subdivisions (1)**, (2), (5), (6) and (7) of this subsection is eight thousand dollars per person or more, **no deduction shall be allowed under this subdivision;** and

(ii) **Where the total modification under subdivisions (1)**, (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the **total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference**

> **between eight thousand dollars and the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;**
>
> West Virginia Code § 11-21-12(c)(8) (emphasis added).

The same $8,000.00 deduction from Federal AGI is also granted to West Virginia taxpayers who are permanently and totally disabled. *Id.*

It is a basic premise of tax law that income tax deductions and tax exemptions are matters of legislative grace. See Interstate T Lines v. Commissioner of Internal Revenue, 319 US 590 at 593. 63 S. Ct. 1279 at 1281, 87 L. Ed. 1607 at ___, (1943); see also INDOPCO. Inc. v. Commissioner of Internal Revenue, 503 U.S. 79 at 84, 112 S. Ct. 1039 at 1043, 117 L. Ed 2d 226 at ___ (1992). The State of West Virginia can exempt from taxation income from any source in any amount under any conditions that is sees fit. Furthermore, exemptions and deductions from tax must be strictly construed against the person claiming the exemption or deduction. See RGIS v. Palmer, 209 W. Va. 152, 544 S.E.2d 79 (2001) ("'Where a person claims an exemption from a law imposing a license or tax, such law is strictly construed against the person claiming the exemption"', quoting Syllabus Point 4, Shawnee Bank, Inc. v. Paige, 200 W. Va. 20, 488 S.E.2d 20 (1997)).

Both the Senior Citizen Deduction and the total disability deduction are subject to specific limitations by statute. The Senior Citizen Deduction

of $8,000.00 is reduced to the extent that the taxpayer already deducted any of the following items from Federal AGI. The limitation on the Senior Citizen Deduction is clearly stated in Section 11-21-12(c)(8)(i) and (ii), *supra*.

> **§11-21-12. West Virginia adjusted gross income of resident individual.**
>
> (c) *Modifications reducing federal adjusted gross income.* -- **There shall be subtracted from federal adjusted gross income to the extent included therein:....**
>
> **(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;**
>
> (2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the state of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the state of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after the

thirtieth day of June, one thousand nine hundred eighty-seven;....

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first two thousand dollars of benefits received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and the first two thousand dollars of benefits received under any federal retirement system to which Title 4 U. S. C. §111 applies: *Provided, however,* That the total modification under this paragraph shall not exceed two thousand dollars per person

receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after the last day of December, one thousand nine hundred eighty-eight;

(6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, under any West Virginia police, West Virginia firemen's retirement system or the West Virginia state police death, disability and retirement fund, the West Virginia state police retirement system or the West Virginia deputy sheriff retirement system, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

(7) (A) For taxable years beginning after the thirty-first day of December, two thousand, and ending prior to the first day of January, two thousand three, an amount equal to two percent multiplied by the number of years of active duty in the armed forces of the United States of America with the product thereof multiplied by the first thirty thousand dollars of military retirement income, including retirement income from the regular armed forces, reserves and

national guard paid by the United States or by this state after the thirty-first day of December, two thousand, including any survivorship annuities, to the extent included in gross income for federal income tax purposes [sic]

(B) For taxable years beginning after the thirty-first day of December, two thousand two, the first twenty thousand dollars of military retirement income, including retirement income from the regular armed forces, reserves and national guard paid by the United States or by this state after the thirty-first day of December, two thousand two, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(C) In the event that any of the provisions of this subdivision are found by a court of competent jurisdiction to violate either the constitution of this state or of the United States, or is held to be extended to persons other than specified in this subdivision, this subdivision shall become null and void by operation of law...

.

West Virginia Code § 11-21-12(c)[sic](8) (some internal sections omitted).

The Legislature has expressed a mandate to reduce the West Virginia Senior Citizen Deduction to the extent that the taxpayer's income would be exempt from West Virginia taxes under five separate categories. In this case, Mr. McLear receives interest on US Savings Bonds, which is already exempt from West Virginia personal income tax pursuant to Section 11-21-12(c)(1). Therefore, Mr McLear's West Virginia Senior Citizen Deduction must be correspondingly reduced as required under Section 11-21-12(c)(8)(i) or (ii). By the same token, if a retired West Virginia firefighter receives a pension annuity and is 65 years of age or older, then his Senior Citizen Deduction is correspondingly reduced as well. See Section 11-[sic]12(c)(8)(i) or (ii) and Section 11-21-12(c)(6). The State of West Virginia has wide latitude to limit state tax deductions and exemptions as it sees fit.

The legislative purpose behind the Senior Citizen Deduction is readily apparent. The legislature determined that every West Virginia senior citizen and every citizen who is permanently and totally disabled should receive at least $8,000.00 of income which is exempt from West Virginia personal income taxes.

On the other hand, the State of West Virginia specifically authorizes all taxpayers to deduct from Federal AGI every penny of interest earned on US Saving Bonds in order to calculate the West Virginia adjusted gross income. West Virginia Code § 11-21-12(c)(1). Whether interest earned on US Savings Bonds can be subjected to state taxation is a question of federal law. The state personal income tax code adheres to the federal directive in 34 [sic] U.S.C.

§ 13[sic]24(a) by exempting the total amount of interest received from US Savings Bonds from West Virginia personal income tax.

A mathematical example clearly illustrates the point. Assume that a West Virginia resident is 64 years old and earns $15,000.00 interest on US Savings Bonds. The Taxpayer includes the $15,000.00 interest in Federal AGI and pays the appropriate federal income taxes that are due. When the Taxpayer files his West Virginia personal income tax return, he deducts the $15,000.00 interest from his Federal AGI in order to calculate his West Virginia adjusted gross income. Every penny of interest from US Savings Bonds is exempt from West Virginia personal income tax pursuant to West Virginia Code § 11-21-12(c)(1). The State of West Virginia does not pose any limit on the amount of the deduction for interest earned from US Savings Bonds.

The following year the same Taxpayer is 65 years old and earns the same $15,000.00 interest on US Savings Bonds. Once again the Taxpayer includes the $15,000.00 interest in his Federal AGI and pays the federal income taxes that are due. When the Taxpayer files the West Virginia income tax return, he deducts the same $15,000.00 interest from his Federal AGI in order to calculate West Virginia adjusted gross income. Every penny of interest from US Savings Bonds is exempt from West Virginia personal income tax pursuant to West Virginia Code § 11-21-12(c)(1). The State of West Virginia only limits the West Virginia Senior Citizen Deduction – the second deduction at issue. The Taxpayer's West Virginia Senior Citizen Deduction must be reduced as directed by statute.

Consequently, in the second year the $15,000.00 in federal interest is subtracted from the $8,000.00 Senior Citizen Deduction (which is reduced to Zero).

When the taxpayer is 64 years old, he deducts every penny of interest earned from US Savings Bonds. Regardless of the Taxpayer's age, the Taxpayer deducts the full amount of interest received from US Savings Bonds in order to calculate the West Virginia taxable income. The State of West Virginia only limits the West Virginia Senior Citizens Deduction – a state deduction – as the State has a right to do.

In short, Mr. McLear's argument is that he wants two unlimited deductions not simply the one unlimited deduction mandated by federal law. As stated above, deductions and exemptions are matters of legislative grace –nothing more, nothing less. The State of West Virginia is within its rights to limit the West Virginia Senior Citizen Deduction and has clearly done so under West Virginia Code § 11-21-12(c)(8). The statute is clear and unambiguous. The State Commissioner must apply the law as written by the West Virginia Legislature.

CONCLUSIONS OF LAW

1. It is a basic premise of tax law that income deductions and tax exemptions are matters of legislative grace. See Interstate T Lines v. Commissioner of Internal Revenue, 319 US 590 at 593. 63 S. Ct. 1279 at 1281, 87 L. Ed. 1607 at ___, (1943); see also INDOPCO. Inc. v. Commissioner of Internal Revenue, 503 U.S. 79 at 84, 112 S.Ct. 1039 at 1043, 117 L. Ed 2d 226 at ___ (1992).

2. Exemptions and deductions from tax must be strictly construed against the person claiming the exemption or deduction. See RGIS v. Palmer, 209 W. Va. 152, 544 S.E.2d 79 (2001) ("'Where a person claims an exemption from a law imposing a license or tax, such law is strictly construed against the person claiming the exemption'", quoting Syllabus Point 4, Shawnee Bank, Inc. v. Paige, 200 W. Va. 20, 488 S.E.2d 20 (1997)).

3. Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation. See BB Enterprises v. Palmer, 214 W. Va. 571, 591 S.E.2d 129 at Syllabus Point 3 (WV 2003); Syncor International Corporation v. Palmer, 208 W. Va. 658, 542 S.E.2d 479 at Syllabus Point 1 (WV 2001); and Crockett v. Andrews, 153 W. Va. 714, 172 S.E.2d 384 at Syllabus Point 2 (WV 1970).

4. West Virginia Code § 11-21-12(c)(8) is clear and unambiguous. The State Tax Commissioner must apply the law as written by the West Virginia Legislature.

5. The maximum Senior Citizen Deduction of $8,000.00 must be reduced as specifically enumerated in West Virginia Code § 11-21-12(c)(8)(i) and (ii).

6. The West Virginia Senior Citizen deduction as codified in West Virginia Code § 11-21-12(c)(8) does not impose a state income tax on interest earned from federal debt obligations in violation of 31 U.S.C. § 3124(a).

WHEREFORE, the Court does hereby **ORDER** that the above –styled action is **DISMISSED** with prejudice and is **STRICKEN** from the docket of the Circuit Court of Kanawha County.

The Court notes the objections and exceptions of all parties aggrieved by this Order.

The Clerk of the Court is hereby **ORDERED** to forward a copy of this Final Order to all parties of record.

Enter this 13 th day of September, 2007.

S/ PAUL ZAKAIB, JR., CIRCUIT JUDGE

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, SS

I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COURT AND IN SAID STATE., DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 17TH DAY OF SEPTEMBER 2007 S/ CATHY S. GATSON CLEF,CIRCUIT COURT OF KANAWHA COUNTY WEST VIRGINIA

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 22nd of February, 2008, the following order was made and entered:

Robert L. McLear, Petitioner Below,

Petitioner

vs.) No. 073085

West Virginia State Tax Commissioner,

Respondent Below, Respondent

On a former day, to-wit, October 16, 2007, came petitioner, R.L. McLear, pro se, and presented to the Court his petition praying for an appeal from a judgment of the Circuit Court of Kanawha County, rendered on the 14th day of September, 2007, with the record accompanying the petition. Thereafter, on the 6th day of November, 2007, came the respondent, West Virginia State Tax Commissioner, by L. Wayne Williams, Assistant Attorney General, and presented to the Court his written response thereto.

Upon consideration whereof, the Court is of opinion to and doth hereby refuse said petition for appeal.

A True Copy

Attest: S/ Rory L. Perry II

Clerk, Supreme Court of Appeals

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

ROBERT L. MCLEAR,
PETITIONER,

VS. //// **CASE NO. : 04-P-198**

WEST VIRGINIA STATE TAX COMMISSIONER
RESPONDENT.

ENTERED
CA O.B. No 270
PAGE 113
JUNE -8 2007
CAROLE JONES
CLERK CIRCUIT COURT

ORDER

On this 30th day of November, 2004, came the petitioner, Robert McLear, pro se, who filed with this Court a Petition for Judicial Review from a Final Order from the West Virginia State Tax Commissioner. The Respondent, the West Virginia State Tax Commissioner, by Counsel, Dale W. Steager, responded to the Petition for Judicial Review.

The Court will note that this appeal has been pending, without decision, since 2004. The Court will further note that this appeal has been assigned to two prior judges before now reaching this judge.

The Court would adopt the Findings of Fact of the Tax Commissioner's Final Order.

The issue is whether the Respondent Commissioner erred or abused his discretion when he found that the State of West Virginia does not unlawfully impose its personal income tax on United States savings bond interest received by senior citizens?

The applicable law as stated in W. Va. Code § 11-21-12(c) reads:

[See Page 6 of this Appendix]

The Petitioner argues that the senior citizen reducing modification, in effect, imposes tax on savings bonds excluded from tax under W. Va. Code § 11-21-12(c)(1).

The Respondent Commissioner found that the code excludes income derived from United States obligations, without any cap placed thereon. The Respondent further found that the legislature had every right to limit the senior citizen exclusion. Accordingly, the Tax Commissioner found that the code was not invalid in any manner as applied to the Petitioner's tax filing. Additionally, it was noted to the parties that the Tax Commissioner did not have the authority to hold any section of the code unconstitutional and that the Tax Commissioner would only determine whether the code could be lawfully applied.

The Court **FINDS** that the Respondent Tax Commissioner did not abuse his discretion and did not err in determining that the code excludes income derived from United States obligations, without any cap placed thereon, or that there was a cap on the senior citizen exclusion, and ultimately, that the code was not invalid in any manner as applied to Petitioner's tax filing.

Accordingly, the Court **ORDERS**:

1. The Petition for Appeal is **DENIED;**
2. This is a Final Order disposing of the appeal;
3. The Clerk of the Court is hereby directed to deliver copies to parties of record, or their respective counsel.

ENTERED this 7th day of June, 2007;

S/ The Honorable J.D. Beane, Judge

Exhibit F

UNITED STATES V. ATLAS LIFE INSURANCE CO. 381 U.S. 233 NO. 489

In UNITED STATES V. **ATLAS LIFE** INSURANCE CO. 381 U.S. 233 NO. 489, the United States Supreme Court reviewed and affirmed the ruling in NATIONAL **LIFE** INS. CO. V. UNITED STATES, 277 U.S. 508 as shown in the following excerpt:

"IN NATIONAL **LIFE**, THE COURT STRUCK DOWN A PROVISION OF THE FEDERAL INCOME TAX LAW WHICH PERMITTED INSURANCE COMPANIES TO EXCLUDE MUNICIPAL BOND INTEREST FROM THEIR GROSS INCOME AND AT THE SAME TIME REDUCE THE RESERVE DEDUCTION OTHERWISE AVAILABLE TO THE COMPANY BY THE FULL AMOUNT OF THE EXEMPT INTEREST WHICH WAS EXCLUDED FROM GROSS INCOME, THE RESULT BEING THAT THE COMPANY PAID AS MUCH TAX AS IT WOULD HAVE PAID HAD THE SAME TOTAL INCOME BEEN ENTIRELY FROM TAXABLE SOURCES. UNDER THAT PROVISION, A COMPANY SHIFTING ITS INVESTMENTS FROM TAXABLE TO NONTAXABLE SECURITIES WOULD HAVE LOWERED NEITHER ITS TAXABLE INCOME NOR ITS TOTAL TAX. AS COMPARED WITH THE COMPANY DERIVING ITS INCOME ONLY FROM TAXABLE SOURCES, THE

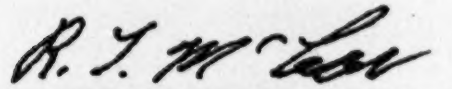
ENTERPRISE WITH THE SAME TOTAL AMOUNT OF INVESTMENT INCOME DERIVED PARTLY FROM EXEMPT AND PARTLY FROM TAXABLE SOURCES WOULD PAY MORE TAX PER DOLLAR OF TAXABLE GROSS INCOME, I.E., TAXABLE INCOME BEFORE DEDUCTION FOR THE RESERVE. UNABLE TO PERCEIVE ANY PURPOSE IN REDUCING ONE DEDUCTION BY THE FULL AMOUNT OF ANOTHER, SAVE FOR AN INTENT TO IMPOSE A TAX ON EXEMPT RECEIPTS, THE COURT RULED THAT "ONE MAY NOT BE SUBJECTED TO GREATER BURDENS UPON HIS TAXABLE PROPERTY SOLELY BECAUSE HE OWNS SOME THAT IS FREE." 277 U.S., AT 519."

And later in the decision, the Supreme Court declared:

"THE COURT CONSIDERED NATIONAL LIFE TO HOLD THAT "A STATE MAY NOT SUBJECT ONE TO A GREATER BURDEN UPON HIS TAXABLE PROPERTY MERELY BECAUSE HE OWNS TAX-EXEMPT GOVERNMENT SECURITIES." 281 U.S., AT 321. THIS PARAPHRASE OF THE NATIONAL LIFE HOLDING WAS CORRECT ..."

Dated: April 2, 2008

Respectfully submitted,



Robert L. McLear
11 Woodland Avenue,
Parkersburg, WV 26101
(304) 863-6083